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| <p>IN THE MATTER OF A CONTROVERSY</p> <p>BETWEEN</p> <p>PACIFIC MARITIME ASSOCIATION</p> <p>AND</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 63</p> <p>Re: Alleged violation of technology framework and Section 1 of the PCCCD by MTC at the West Basin Container Terminal</p> | <p>SCAA-0022-2007</p> <p>OPINION AND DECISION</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>September 11, 2007</p> <p>Long Beach, California</p> |
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The hearing was held at 9:05 AM on Tuesday, September 11, 2007 at 2001 John Gibson Boulevard, San Pedro, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and testimonies of witnesses. A Certified Shorthand Reporter was in attendance and recorded a transcript of the hearing.

APPEARANCES:

FOR THE EMPLOYERS: Tim Kennedy
Pacific Maritime Association

FOR THE UNION: Joe Gasperov
ILWU Local 63

ALSO PRESENT: Various others

ISSUE:

Whether MTC is allowing non-bargaining unit personnel hereafter NBUP (foremen), to perform clerks work described in the PCCCD and depicted in the technology framework of the PCCCD.

BACKGROUND:

The hearing was held on September 11, 2007 and at its conclusion this Arbitrator requested a personal demonstration of the technology in dispute. This demonstration was provided by the parties on October 1, 2007 at the terminal in dispute. This Arbitrator was afforded a complete presentation of the operation as it pertains to the flow of cargo to and from the ship on the above date.

DISCUSSION:

Both parties are in agreement that all guidelines pursuant to Section 6 (B) (8) of the technology framework and as it applies to Section 1 of the PCCCD have been followed. In addition the parties are in agreement as to the substance of issue.

It is the Union's position that MTC has mounted OCR readers on the seal beams of its hammer head cranes at China Shipping Berth 126 Los Angeles.

The Union makes no objection to the OCR's and their designed function to verify that correct containers are loaded and discharged as per the employers planned instructions.

However the Union objects to the utilization of NBUP (foremen) by MTC to correct mistakes before the containers reach the OCR reader thereby violating the written agreement of the framework and Section 1 of the PCCCD.

Within Union exhibit No.3 are the following Sections of the framework that are relevant to the instant issue:

Section VI (A) (2) states "All traditional marine clerk work modified by any technology shall be assigned to marine clerks in accordance with Section 1 of the PCCCD as modified herein."

Section VI(A)(4) states that "Any new marine clerks' work created by the introduction of technology shall be assigned to marine clerks at a terminal and, thereafter, such assignment shall be constructed as having the same effect as if it were an addition to Section 1 of the PCCCD at that terminal. All work created by technology that is functionally equivalent to the work of the marine clerks in their traditional union jurisdiction, shall be assigned to marine clerks and remain marine clerks' work."

Section VI (A) (4) (b) states "All traditional marine clerks work, including work modified by any technology, shall be assigned to marine clerks in accordance with Section 1 of the PCCCD."

Section VI(A)(4)(c) states "All work created by technology, including the operating of such technology, that is functionally equivalent to traditional marine clerks' work shall be assigned to marine clerks."

Section VI (A) (4) (d) states "Technologies shall not be used to shift traditional Union jurisdiction to non-bargaining unit employees or facilities. Bargaining unit jobs may be eliminated only as a result of labor-saving devices and technologies and not as a means to achieve labor costs saving by using a cheaper work force or sub contractor."

The following exhibits further support the Union's position.

Union exhibit No 2 reads:

Exception Process

If the container number is not accurately captured by the OCR system, then a marine clerk will be assigned to enter the actual container number.

If the container is not present on a job list, then the marine planner will be notified and the container status will be corrected accordingly.

Union exhibit No 4

Union Information Request No. 6

Please describe all work and labor that arise from the technology described in your March 31, 2004 letter and identify the types or classification of employees to perform such work. Please also explain your reasons for assigning such work to such employees.

Employer Response

A marine clerk will be responsible for administering the exception process. The exception process is initiated when the OCR system fails to read the equipment number, loading or discharging from a vessel.

The testimony of Eli Bohm, hereafter Bohm, is vital in importance as it clarifies MTC's position and the work practices sanctioned by MTC at the terminal in dispute.

The testimony of Bohm from transcript pages 90 through 152 makes no claim that the work in question is that of a worker other than a marine clerk.

The exhibits in bold above confirm that the parties have reached agreement as it pertains to the job functions in dispute at the terminal in dispute as per the Framework Agreement.

OPINION:

This Arbitrator finds that the testimony of Bohm was evasive and during certain questions Bohm chose to use selective memory lapse when asked specific questions. The credibility of Bohm as a witness is viewed as less than forthright and such testimony is confirmed on pages 90-152 of the transcript substantiates the fact that MTC is intentionally violating the master agreement by allowing NBUP (foremen) to perform the job functions of a marine clerk.

In summary this Arbitrator is convinced that MTC and Bohm through his own implied admission and with full knowledge have allowed NBUP (foremen) to perform clerk functions. It is with reason and logic after viewing the operation firsthand that MTC has made a decision to not allow the technology to perform as so intended within the framework because to do so would cause a productivity decrease.

The Employer must be held accountable when making technology modifications and when such modifications do not perform as projected the Employer shall remain obligated to assign the work described in the instant dispute to marine clerks.

DECISION:

1. MTC is found guilty of intentionally and in bad faith of violating the Master Agreement as it applies to the instant dispute.
2. MTC if utilizing the OCR on the hammer head crane shall allow the OCR to perform its designed function.
3. There shall be no intrusion by NBUP (foremen) before the container reaches the OCR as it pertains to traditional marine clerks work.
4. If the OCR recognizes an error such error shall be conveyed to the clerk and corrections shall occur as per the technology agreement between the parties.

/s/ David Miller

David Miller

Area Arbitrator Southern California

Dated: October 5, 2007